# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO No.1259 of 2007 (O&M)**
**Date of Decision : 09.05.2022**

M/s Onkar Bus Service Ltd.

….Appellant

Versus

Kamaljit Kaur and others

…..Respondents

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Sudhir Paruthi, Advocate
for the appellant.

Mr. Suman Jain, Advocate and
Mr. Man Mohan, Advocate
for respondent No.7/Insurance Company.

**PANKAJ JAIN, J. (ORAL)**

This is an appeal preferred by the owner of the offending vehicle against the Award dated 3rd November, 2006 passed by the Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal').

2. As per the claim petition, on 24.2.2005 Lachhman Dass along with his brother Gian Chand went to Phagwara to attend the marriage. At about 5 p.m. both of them in order to board the bus for Jalandhar were present near Octroi Post, Banga Road, Phagwara. 5-6 other passengers were also waiting for the bus. Bus No.PB-08-AF-2902 came from the Banga side. The bus was signaled to stop. Respondent No.1 stopped the bus. The brother of the deceased boarded the bus from the back door while he and other passengers rushed towards the front door of the bus. Some ladies and children boarded the bus first. As soon as the deceased placed the foot in

the stair of the door, respondent No.6 accelerated the bus with a jerk, as a result of which Lachhman Dass fell down on the road and got under the rear tyres of the bus. His stomach was completely crushed. Respondent No.6 did not take notice of the passengers boarding the bus. The brother of the deceased and other passengers raised hue and cry. Respondent No.6 stopped the bus. Lachhman Dass in critical condition was taken to Civil Hospital, Phagwara where he was declared dead.

3. The claim petition was contested. Appellant and the Driver filed joint written statement. Insurer i.e. respondent No.7 filed separate written statement before the Tribunal, pleading that "*...driver of the offending bus was not holding valid effective driving licence at the time of alleged accident*". On the basis of the pleadings, Ld. Tribunal framed the following issues :-

> *1. Whether Lachhman Dass died in a road accident on 24-2-2005 caused by bus bearing No.PB-08-AF2902 being driven by respondent No.1 ? OPP*
>
> *2. If issue No.1 is proved in positive, whether the petitioners are entitled to get compensation, if so that what amount and from whom? OPP*
>
> *3. Whether respondent Gurdeep Singh was not possessing the driving licence to drive the bus, if so, its effect?*
>
> *4. Whether the bus was being plied without proper documents, if so its effect? OPR*
>
> *5. Relief."*

4. Ld. Tribunal allowed the claim petition and awarded compensation of Rs.3,67,000/- to the claimants along with interest @ 6%

per annum from the date of claim petition till realization.

5. On 24th of May, 2007 following order was passed by this Court :-

> *"__X-objection No.23-CII of 2007__*
>
> *The learned counsel for the cross-objectors wishes to withdraw the cross-objections with liberty to file the same as and when cause of action arises for the said purpose.*
>
> *Dismissed as withdrawn.*
>
> ***__C.M. No.6183-CII of 2007__***
>
> *This is an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal.*
>
> *For the reasons stated in the application, the delay of three days in filing the appeal is condoned.*
>
> ***__FAO No.1259 of 2007__***
>
> *Appeal dismissed qua respondents No.1 to 6.*
>
> *Admitted qua respondent No.7.*
>
> *Recovery stayed."*

6. Consequently, the controversy in the present appeal now pertains to Issue No.3 only.

7. Ld. Counsel for the appellant has assailed the findings recorded by the Tribunal on Issue No.3 claiming that no evidence was led by the Insurance Company to prove that the owner i.e. the appellant was negligent in employing respondent No.6-Gurdeep Singh. He asserts that it was for the Insurance Company to first discharge onus to prove the negligence on the part of the appellant and only thereafter the appellant could have rebutted the same by leading cogent evidence. He further asserts that in the

absence of any such evidence led by the Insurance Company, the finding recorded on Issue No.3 by the Tribunal suffers from patent illegality and the same deserves to be reversed. Ld. Counsel for the appellant in support of his arguments has placed reliance upon ratio of law laid down by Supreme Court in **‘United India Insurance Company Limited vs. Lehru’, (2003) 3 SCC 338** and **‘National Insurance Company Limited vs. Swaran Singh’, (2004) 3 SCC 297.**

8. Per contra, Ld. Counsel for respondent No.7/Insurance Company submits that as per settled law it was for the owner to prove that when he hired the Driver he checked whether the driver was holding a valid driving licence or not. In case the Driver produced the licence he ought to have satisfied himself with respect to his competence of the driving. In support of his contention, Ld. Counsel relies upon the judgment passed by Apex Court in '**Pepsu Road Transport Corporation vs. National Insurance Company', (2013) 10 SCC 217**.

9. Having heard Ld. Counsel for the parties and after perusing the record of the case, it is found that the evidence led by the appellant was deficient. It is settled proposition of law that the Insured and the Insurer are bound by the terms and conditions of the policy and in order to drive-home benefit, initial onus lies upon the propounder of the policy i.e. the Insurer. Respondent No.7 in its written statement had taken a specific plea w.r.t. Driver not holding valid Driving Licence. Based on the aforesaid pleadings, a specific issue w.r.t. Driving Licence was culled out by the Ld.

Tribunal. Thus, the appellant was well aware of the stand of the Insurer yet failed to discharge the initial onus by leading evidence that he checked the licence of the driver and was satisfied with his competence.

10. So far as the proposition of law laid down by the Apex Court in the cases of **Lehru and others** (supra) and **Swaran Singh** (supra) relied upon by Ld. Counsel for the appellant, the aforesaid judgments have been discussed by the Apex Court in the later judgment titled as '**<u>Pepsu Road Transport Corporation vs. National Insurance Company', (2013) 10 SCC 217</u>** wherein it has been held that –

> *"8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. <u>As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver</u>. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is*

> *otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

11. The facts of the present case when viewed in the backdrop of the law laid down by the Supreme Court in the case of **Pepsu Transport Corporation** (supra), it is found that the appeal sans merit as no fault can be found with the finding recorded by the Tribunal on Issue No.3.

12. As a sequel of the discussion herein above, the present appeal is dismissed being without merits.

13. All the pending miscellaneous applications, if any, are also disposed off.

**May 09, 2022** **(PANKAJ JAIN)**
**Dpr** **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No